IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

W.A.No. 2224 of 2007

(AGAINST THE JUDGEMENT IN WPC.22123/2006 Dated 21/08/2006.)

APPELLANT/PETITIONER:

ANNAMMA CHACKAPPAN,
W/O.CHACKAPPAN,
PERUVANKAL HOUSE,
CHELLAD,
KOTHAMANGALAM,
REPRESENTED BY POWER OF ATTORNEY
HOLDER, JOY VARGHESE,
52,
S/O. VARGHESE,
PERUVANGAL,
CHELAD P.O.,
KOTHAMANGALAM.

BY ADV. SRI.P.K. BALAKRISHNAN NAIR

RESPONDENTS/RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY (FINANCE),
FINANCE DEPARTMENT,
SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE ACCOUNTS OFFICER,
OFFICE OF THE ACCOUNTANT GENERAL (A&E),
M.G.ROAD, P.B.NO.5607,
THIRUVANANTHAPURAM.

3. THE SUB TREASURY OFFICER,
SUB TREASURY,
KOTHAMANGALAM.

BY SR.GOVERNMENT PLEADER SHRI N. MANOJ KUMAR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 2224 OF 2007

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Dated this the 15th October, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Disturbed by the order passed by the learned single Judge in W.P.(C) 22123 of 2006 dated 21st August, 2006, an unfortunate widow of a school teacher is before us in this appeal.

2. The appellant's husband, while he was alive, was working as a school master in a Government Lower Primary School, Kothamangalam. While in service, he expired on 28.04.1985, leaving behind the appellant and three children. The appellant was eligible and entitled to get the family pension as per the provisions of the Kerala Service Rules. Accordingly, the State Government had sanctioned family pension to the appellant and the same was paid from 28.04.1985 till 31.10.1992. Since she found it very difficult to maintain herself and her three children and she did not have any other source of income to take care and educate her three children, she joined her sister in America who was working there as a nurse and worked in that place as a nurse. After a span of 12 years, she has returned to her native place and thereafter, she has made an application before the authorities for re-validating the family pension. The Accounts Officer of the Indian Audit and Accounts Department, Office of the Accountant General (A&E), Kerala has passed an order dated 01.08.2005, re-validating the pension for a period of three years. In so far as the arrears of pension is concerned, the Accounts Officer has only stated that it requires to be done by the State Government. The intimation

received by the appellant in this regard is as under:

"Indian Audit and Accounts Department,
Office of the Accountant General (A & E),
Kerala, M.G. Road, P.B.No.5607,
Thiruvananthapuram - 695 039.

No.Ply./TR/404/LS/50 Date: 1.8.05

To
The Sub Treasury Officer,
Kothamangalam.

Sir,
Sub: Regarding payment of arrears.
Ref: Your letter No.A4/30/2005 dtd.21.7.2005

Please refer to the letter cited. Both halves of PPO SF MVZ 3 are returned herewith as they are revalidated w.e.f. 1.6.2005. For the payment of arrears of family pension attested copies of the relevant pages of PPO (2 copies) may be furnished for transmission to Govt. for sanction of arrears from 1.11.1992 to 5/2005.

Yours faithfully,
sd/-
Sr. Accounts Officer

Copy to:
Annamma Chackappan,
C/o. Joy Varghese,
Peruvingal House, Chelad P.O.,
Kothamangalam - 686 681.

Yours faithfully,
sd/-
Sr. Accounts Officer"

3. After receipt of the aforesaid communication from the Accounts Officer of the Accountant General's Office, the appellant has filed a representation dated 15.07.2005 before the State Government requesting the State Government to sanction the arrears of pension for the period from

01.11.1992 to 30.05.2005. The request of the appellant is rejected by the State Government by their communication dated 16.12.2005, addressed to the Accountant General with copy to the appellant, which reads as under:

> *"Attention is invited to the reference cited. I am to inform you that as per Circular No. 03/2000/Fin dated 17.01.2000 and in terms of Rule 136 Part III , K.S.R. read with Article 294 KTC , Vol.**1**, the request for arrears of family pension of Smt. Annamma Chackappan is not admissible"*

4. Pursuant to the orders passed by the State Government, the Accounts Officer of the Accountant General's office, by his letter dated 13.01.2006, has informed the appellant as well as the Treasury Officer, Kothamangalam that in view of the communication received from the State Government dated 16.12.2005,the request of the appellant for arrears of family pension is not admissible. The communication received by the appellant in this regard is as under:

"Indian Audit and Accounts Department,
Office of the Accountant General (A & E),
Kerala, M.G. Road, P.B.No.5607,
Thiruvananthapuram - 695 039.

No.Ply./ur. 58/LS/186 Date: 13.1.2006

To
The Sub Treasury Officer,
Kothamangalam - 686 691.

Sir,
Sub: Payment of arrears of P.F. in respect of Smt. Annamma Chackappan - Reg..

Ref: 1. A4/30/2005 dt.27.8.2005 of Sub Treasury, Kothamangalam.

2. Lr. No.93622/Pen-A2/05/Fin. dt.16.12.2005

Government vide letter under reference 2 have intimated that the request of Smt.Annamma Chackappan for the arrears of pension is not admissible as per instruction in Circular No.3/2000/Fin. dt. 17.1.2000 and in terms of Rule 136 Part III, KSR read with Article 294 KTC Vol.I . Copy of Govt. letter is enclosed herewith.

Yours faithfully,
sd/-
Sr. Accounts Officer

Copy to:

Annamma Chackappan,
C/o. Joy Varghese,
Peruvingal House, Chelad P.O.,
Kothamangalam - 686 681.

Yours faithfully,
sd/-
Sr. Accounts Officer"

5. Aggrieved by the aforesaid order, the appellant/petitioner was before this court in W.P.(C)No. 22123 of 2006. In the aforesaid Writ Petition, the appellant/petitioner has sought for a mandamus to the State Government to sanction arrears of family pension and further to quash the orders passed by the State Government dated 16.12.2005 and the Accounts Officer of the Accountant General's office dated 13.01.2006. The learned single Judge has rejected the Writ Petition. That is how, the appellant is before us in this appeal.

6. The learned counsel for the appellant would submit that under Rule 136 of Part III of the Kerala Service Rules read with Article 294 of the Kerala Treasury Code, there is a discretion vested in the State Government for

considering the request for grant of arrears of family pension if the pension arrears exceeds Rs.75,000/- Since that discretion is not properly exercised, the learned counsel for the appellant would submit that the order passed by the State Government and the impugned order passed by the learned single Judge requires to be set aside and appropriate relief requires to be granted to the appellant.

7. Per contra, the learned Government Pleader, relying upon Article 294 of the Kerala Treasury Code read with Rules 135 and 136 of Part III of the Kerala Service Rules and also the circular instruction issued by the State Government, would submit that the learned single Judge is justified in rejecting the request of the appellant.

8. In order to resolve the controversy between the parties, in our opinion, the provisions of the Article 294 of the the Kerala Treasury Code and Rules 135 and 136 of Part III of the Kerala Service Rules and the circular instruction issued by the State Government, No. 3/2000/Fin dated 17.01.2000 require to be noticed. Therefore, the said provisions are extracted, as under:

Article 294 of of the Kerala Treasury Code:

> *"(a) If a pension payable in India remains undrawn for more than three years, the pension shall cease to be payable (Rule 166, Part III of the Kerala Service Rules)*
> *(b) If the pensioner afterwards appears, the disbursing officer may renew his payments. He shall not, however, pay the arrears without the orders of the Accountant General, and, if the pension in arrears is to be paid for the first time or if the*

amount of the arrears exceeds Rs. 1000/-, without obtaining through the Accountant General the previous sanction of the Government (Rule 167, Part III of the Kerala Service Rules). If, however, the Accountant General considers that the suspension of payment was due to error or neglect on the part of any public officer, he may direct that the arrears be paid without the orders of the Government. (Rule 168, Part III of the Kerala Service Rules)."

Rule 135 of Part III of the Kerala Service Rules:

*"**Lapses and forfeiture.** - If a pension remains undrawn for more than three years , the pension ceases to be payable."*

Rule 136 of Part III of the Kerala Service Rules:

"If the pensioner afterwards appears, the Disbursing Officer may reclaim the Pension Payment Order and renew his payments. But the arrears cannot be paid (a) without the orders of the Audit Officer, and (b) if the pension in arrears is to be paid for the first time or if the amount of arrears exceeds Rs.75, 000/- without the previous sanction of the Government to be obtained through the Audit Officer."

Circular No.3/2000/Fin dated 17.01.2000:

*"It has come to the notice of the Government that the requests for revalidation of PPOs. invoking Article 294 of K.T.C. Vol.**I** and Rule 136 Part III KSRs. from pensioners and family pensioners for the reason of non-drawal of pension in time or for various other reasons, are on increase. Being away from the State is*

the usually furnished reason for non-drawal of pension. Government have recently enhanced the period of validity of the pension when not drawn, from 1 year to 3 years. The provisions under Rule 136 Part III KSRs, is intended to be used sparingly and in exceptional cases only. Accordingly Government hereby issue following general instructions regarding the application of this provision.

2. As per Rule 126, Part III KSRs, a pensioner specially exempted from personal appearance, or suffering from bodily illness, can draw the pension through production of Life Certificate. *As per Rule 129 (a) Part III KSRs, a pensioner who resides in the State may draw his pension through a duly authorised agent possessing a legally valid Power of Attorney who must produce a Life Certificate as provided in Rule 126 ibid on each occasion unless the duly authorised agent has executed an Indemnity Bond to refund the over payments in which case he has to produce the Life Certificate once in a year. As per Note thereunder this procedure is also applicable to all pensioners who reside outside the State, provided they obtain permission of Reserve Bank of India for such drawal of the pension. Such Agents who had executed the Indemnity Bond have to produce Annual Life Certificate.*

3. The rules provide monthly payment of Pension and Family Pension. Non drawal for a long period is not envisaged. That is why it is provided in Rule 133 Part III KSRs. that pension will lapse and forfeit if not drawn for one year now extended to 3 years.

4. Government intend to bring to the notice of all pensioners and Pension Disbursing Officers that in cases where

the pensioners are unable to appear before the Pension Disbursing agencies, they can engage agents to receive their pension as provided in the rules mentioned above. Pensioners and Family Pensioners who could not draw pension when they were out of station to join their children elsewhere or for other valid reasons should utilise the facility provided in the rules itself.

5. Government also make it clear that the provisions of revalidation of PPOs. and drawal of arrears for such non drawal periods in terms of Rule 136 Part III, KSRs read with Article 294 KTC Vol. I will be invoked in future very sparingly and only in deserving circumstances and not on vague reasons like out of station etc. It will be resorted only after the avenues offered by the Rule 129 Part III KSRs. are exhausted or could not be availed for valid reasons."

9. Before we advert to the aforesaid provisions, we want to make it clear that the appellant before us is a widow of a school master of a Government Lower Primary School. She claims that she does not have any properties. She states that has no income and there is no body to support her and her children either from her parents' side or from their in law's. She further states that she has three children and all of them are school going. She has also stated that since she could not lead a decent living in this country, she had no other alternative but to join her sister in America and there, she was working as a nurse. She further pleads that she does not , even now, has a shelter of her own, not only to protect herself but also her three children. It is further stated that she is finding it extremely difficult to educate her three children. It is these pleadings, which are not controverted by the respondents,

makes us to dispose of this appeal by taking humanitarian approach which is based on 'Dharma' rather than by adopting literal meaning of the Article and the Rules which are brought to our notice by the learned Government Advocate. In this matter, we intend to come to the aid of a poor widow who has lost her husband while in service and has three children. We are aware of the fact that this Court is not expected to extend misplaced sympathy.

10. Article 294 of the Kerala Treasury Code states that if a pension payable in India remains undrawn for more than three years, the pension shall cease to be payable. Under clause (b) of the Article 294 of the Code, if the pensioner appears thereafter, the disbursing officer may renew the pension payable to him/her. The said Article would give discretion to the Accountant General and the State Government to pay the arrears, if they are satisfied that there was sufficient and bona fide reasons for the pensioner in not claiming the arrears of pension beyond the period of three years.

11. Rule 129 of Part III of the Kerala Service Rules provides for payment of pension payable to a pensioner to the agents appointed by the pensioner by executing a valid power of attorney. Rule 135 of the Kerala Service Rules states, that, if for any reason, if the pension remains undrawn for more than three years, the pension ceases to be payable. Rule 136 of the Kerala Service Rules is more or less akin to Article 294 of the Kerala Treasury Code. The said provision would indicate that if the pensioner appears before the disbursing officer after the expiry of three years' period and reclaims

pension payable, the disbursing officer may renew the pension payable to a pensioner. This rule also stipulates that the arrears of pension cannot be paid without the orders of the Audit Officer. It is further stated in the rule that if the pension in arrears is to be paid for the first time or if the amount exceeds Rs.75,000/-, the audit officer is required to obtain previous sanction of the State Government for disbursing the arrears of pension payable. The State Government, in exercise of their powers under Rule 136 of Part III of the Kerala Service Rules and Article 294 of the Kerala Treasury Code, have issued certain guidelines to the accounts officers. The said guidelines provides that the arrears normally should be paid. But a discretion is vested in the State Government to consider the case of a genuine and bonafide pensioner for payment of arrears of pension, if it is to be paid for the period beyond three years. The said circular also makes it clear that the provisions of Rule 136 of Part III of the Kerala Service Rules and of Article 294 of the Kerala Treasury Code require to be sparingly used and in deserving circumstances, the arrears of pension can be paid.

12. In the instant case, as we have already noticed that the appellant had to leave the country because she was not in a position to take care of herself and also her three children. Being an ignorant lady, she was not aware of other procedures prescribed under the Kerala Treasury Code as well as in the Kerala Service Rules for claiming the payment of pension due to her for the period between 1992 to 2005. It is only after realising that she is eligible

and entitled for arrears of pension payable to her, she has made an appropriate application/representation before the respondents. In fact, the accounts officer has re-validated her pension for a period of three years. Since he has no power to sanction arrears of pension, he had requested the State Government to consider the request of the appellant. The State Government, by merely following the Article 294 of the Kerala Treasury Code and Rule 136 of Part III of the Kerala Service Rules, have mechanically rejected the request of the appellant/petitioner. In our view, Rule 136 of Part III of the Kerala Service Rules does not contemplate a position that arrears of pension is not payable at all, if the pensioner claims pension after three years. The only hurdle placed is that the disbursing officer should obtain prior permission of the Audit Officer and if the amount claimed exceeds Rs.75,000/-, the Audit Officer should obtain prior permission of the Government. Rule 129 of Part III of the Kerala Service Rules says that pensioner can claim pension through a duly authorised agent. In other words, in spite of her absence, the appellant could have claimed pension through a duly authorised agent. Question, therefore, would be why the appellant did not authorise such an agent. It is clear that she was not getting any support either from her parents or from her in-laws and that compelled her to leave the country and take shelter with her sister. In the facts and circumstances mentioned above, the authorities concerned should have exercised the discretion vested in them in favour of the appellant especially when the

circular says that the provisions of Rule 136 of Part III of the Kerala Service Rules and Article 294 of the Kerala Treasury Code can be sparingly used and in deserving circumstances. Therefore, the rejection of the request made by the appellant by the State Government, is not only arbitrary but also capricious. In a case of this nature, the State Government ought to have extended their helping hand to a widow of poor school master, so that she could lead a decent living and educate her three children.

14. In view of the above, in our opinion, the orders passed by the State Government dated 16.12.2005 and the orders passed by the learned single Judge in W.P.(C)No. 22123 of 2006 dated 21st August, 2006 require to be set aside and a direction requires to be issued to the State Government to re-consider the request of the appellant/petitioner in the light of the observations made by us in the course of the order. Accordingly, the following:

O R D E R

i) The Writ Appeal is allowed.

ii) The orders passed by the learned single Judge in W.P.(C) 22123 of 2006 dated 21st August, 2006 is set aside.

iii) The orders passed by the State Government dated 16.12.2005 and the consequential orders passed by the Accounts Officer of the Accountant General's office dated 13.01.2006 are set aside.

iv) A direction is now issued to the State Government to re-

consider the representation dated 15.07.2005 of the appellant/petitioner in the light of the observations made by us in the course of the order.

With these observations and directions, the Writ Appeal is disposed of. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.